

House Bill 39

By: Representative Holmes of the 61<sup>st</sup>, Orrock of the 58<sup>th</sup>, Brooks of the 63<sup>rd</sup>, Thomas of the 55<sup>th</sup>, Bruce of the 64<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 8 of Title 50 of the Official Code of Georgia Annotated, relating to the Department of Community Affairs, so as to create the Council on Affordable Housing; to provide for its membership, officers, duties, and responsibilities; to provide for filling vacancies on the council; to require counties and municipalities to provide their fair share of affordable housing opportunities within their communities; to provide for certain incentives; to provide for regional contribution agreements; to provide for the submission, review, and certification of plans; to provide for mediation and certain hearings under certain circumstances; to provide for certain protections for approved plans; to provide for certain presumptions; to provide for certain assistance in housing; to provide for certain reports to the General Assembly; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Chapter 8 of Title 50 of the Official Code of Georgia Annotated, relating to the Department of Community Affairs, is amended by adding a new Article 10 to read as follows:

"Article 10

50-8-240.

The General Assembly declares that the statutory scheme set forth in this article is in the public interest in that it comprehends a low and moderate income housing and planning financial mechanism in accordance with regional considerations and sound planning concepts. The General Assembly declares that the preference for the State of Georgia for the resolution of disputes involving allegations of exclusionary zoning is the mediation and review process set forth in this article and not litigation. It is the intention of the General

1 Assembly to provide various alternatives to the use of the builder's remedy as a method of  
2 achieving fair share housing in this state.

3 50-8-241.

4 As used in this article, the term:

5 (1) 'Builder's remedy' means a court imposed remedy for a litigant who is an individual  
6 or a profit-making entity in which the court requires a county or municipality to utilize  
7 zoning techniques such as mandatory set-asides or density bonuses which provide for the  
8 economic viability of a residential development by including housing which is not for low  
9 and moderate income households.

10 (2) 'Commissioner' means the commissioner of the Department of Community Affairs.

11 (3) 'Conversion' means the conversion of existing commercial, industrial, or residential  
12 structures for low or moderate income housing purposes where a substantial percentage of  
13 such housing units are provided for a reasonable income range of low and moderate income  
14 households.

15 (4) 'Council' means the Council on Affordable Housing created by this article.

16 (5) 'Development' means any development for which permission may be required by  
17 county or municipal land use or zoning ordinances.

18 (6) 'Exclusionary zoning litigation' means lawsuits filed in courts of competent jurisdiction  
19 in this state challenging a county or municipality's zoning and land use regulations on the  
20 basis that the regulations do not make realistically possible the opportunity for an  
21 appropriate variety and choice of housing for all categories of people living within the  
22 county or municipality's housing region, including those of low and moderate income, who  
23 may desire to live in the county or municipality.

24 (7) 'Housing region' means a geographic area of not less than two nor more than four  
25 contiguous, whole counties which exhibit significant social, economic, and income  
26 similarities and which constitute to the greatest extent practicable the primary metropolitan  
27 statistical areas as last defined by the United States Census Bureau prior to the effective  
28 date of this article.

29 (8) 'Inclusionary development' means a residential housing development in which a  
30 substantial percentage of the housing units are provided for a reasonable income range of  
31 low and moderate income households.

32 (9) 'Low income housing' means housing that is affordable according to the federal  
33 Department of Housing and Urban Development or other recognized standards for home  
34 ownership and rental costs and occupied or reserved for occupancy by households with a  
35 gross household income equal to 50 percent or less of the median gross income for  
36 households of the same size within the housing region in which the housing is located.

(10) 'Moderate income housing' means housing that is affordable according to the federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income of more than 50 percent but less than 80 percent of the median gross income for households of the same size within the housing region in which the housing is located.

(11) 'Project' or 'housing project' means any specific work or undertaking for the purpose of providing housing accommodations, whether by new construction or by rehabilitation or adaption of existing structures, that shall be affordable to persons or families of low or moderate income. Such work or undertaking may include the acquisition, construction, or rehabilitation of lands, buildings, and improvements of stores, offices, and social, recreational, communal, or other facilities as may be incidental or appurtenant to the housing accommodations that are to be provided.

(12) 'Prospective need' means a projection of housing needs based on development and growth which is reasonably likely to occur in a region, county, or municipality, as the case may be, as a result of the actual determination of public and private entities. In determining prospective need, consideration shall be given to approvals of development applications, real property transfers, and economic projections by state and regional agencies within the state.

(13) 'Resolution of participation' means a resolution adopted by a county or municipality in which the county or municipality chooses to prepare a fair share plan and housing element in accordance with this article.

50-8-242.

(a) There is created and established the Council of Affordable Housing which shall consist of 11 members who shall be appointed by the Governor. Four members shall be elected officials representing the interests of local government, at least one of whom shall be representative of an urban municipality having a population in excess of 40,000 persons and a population density in excess of 3,000 persons per square mile, at least one of whom shall be a representative of a municipality having a population of 40,000 persons or less and a population density of 3,000 persons or less per square mile, and not more than one of whom shall be a representative of the interests of county government. Three members shall represent the interests of households in need of low or moderate income housing, one of whom shall represent the interests of nonprofit builders of low or moderate income housing and shall have an expertise in land use practices and housing issues, one of whom shall be the chairperson of the Board of Community Affairs or his or her designee who shall serve as chairperson of the council, and one of whom shall be the commissioner of

1 the Department of Community Affairs or his or her designee. One member shall represent  
2 the interests of for-profit builders of market rate homes and shall have an expertise in land  
3 use practices and housing issues. Three members shall represent the public interest. The  
4 membership shall be balanced to the greatest extent practicable among the various housing  
5 regions of the state.

6 (b) Except for the chairperson of the Board of Community Affairs and the commissioner  
7 of the Department of Community Affairs, members shall serve for terms of six years,  
8 except that, of the members first appointed, other than the chairperson of the Board of  
9 Community Affairs and the commissioner of the Department of Community Affairs, three  
10 shall serve terms of four years, three shall serve terms of five years, and three shall serve  
11 terms of six years. All members shall serve until their terms expire and until their  
12 successors are selected and qualified. Notwithstanding any other provision of this Code  
13 section to the contrary, a member appointed to represent the interests of local government  
14 shall serve only such length of the term for which appointed as the member continues to  
15 hold elected county or municipal office. Upon such member ceasing to hold elective  
16 county or municipal office, a vacancy shall be declared in such position on the council.  
17 Vacancies shall be filled in the same manner as original appointments, but for the  
18 remainder of the unexpired terms only.

19 (c) The members of the council with the exception of the commissioner shall receive the  
20 same daily expense allowance as members of the General Assembly pursuant to  
21 subsection (b) of Code Section 45-7-21 for each day of service on the business of the  
22 council.

23 (d) The Governor shall nominate the initial members of the council within 30 days after  
24 the effective date of this article.

25 (e) Any member may be removed from office for misconduct in office, willful neglect of  
26 duty, or other conduct evidencing unfitness for office, or for incompetence. A proceeding  
27 for removal shall be instituted by the Attorney General in the Superior Court of Fulton  
28 County. A member of the council shall automatically forfeit his or her office on the  
29 council upon conviction of any crime.

30 (f) The council shall be attached to the Department of Community Affairs for  
31 administrative purposes only.

32 50-8-243.

33 (a) The council may establish and from time to time alter such plan of organization as it  
34 may deem expedient and may incur expenses within the limit of funds available to it.

35 (b) The council shall elect annually by a majority of its members one of its members, other  
36 than the chairperson, to serve as vice chairperson for a term of one year and until his or her

1 successor is elected and qualified. The vice chairperson shall carry out all of the  
2 responsibilities of the chairperson as described in this article during the chairperson's  
3 absence, disqualification, or inability to serve.

4 (c) The council shall appoint and fix the salary of an executive director who shall serve at  
5 the pleasure of the council. The council may employ such other personnel as it deems  
6 necessary. The Attorney General shall be the legal counsel for the council and shall  
7 provide the council with legal advice and representation. The council may contract for the  
8 services of other professional, technical, and operational personnel and consultants as may  
9 be necessary to the performance of its duties.

10 50-8-244.

11 (a) It shall be the duty of the council to:

12 (1) Determine the housing regions of the state;

13 (2) Estimate the present and prospective need for low and moderate income housing at  
14 the state and regional levels;

15 (3) Adopt criteria and guidelines for:

16 (A) Determination by counties and municipalities of their present and prospective fair  
17 shares of the housing need in a given region. County and municipal fair shares shall  
18 be determined after crediting on a one-to-one basis each current unit of low and  
19 moderate income housing of adequate standards, including any such housing  
20 constructed or acquired as part of a housing program specifically intended to provide  
21 housing for low and moderate income households. Notwithstanding any other  
22 provision of law to the contrary, a county or municipality shall be entitled to credit for  
23 a unit if it demonstrates that:

24 (i) The county or municipality issued a certificate of occupancy for the unit, which  
25 was either newly constructed or rehabilitated between January 1, 2000, and July 1,  
26 2005;

27 (ii) A construction code official certifies, based upon a visual exterior survey, that the  
28 unit is in compliance with pertinent construction code standards with respect to  
29 structural elements, roofing, siding, doors, and windows;

30 (iii) The household occupying the unit certifies in writing under penalty of perjury  
31 that it receives no greater income than that established pursuant to paragraph (9) or  
32 (10) of Code Section 50-8-241 to qualify as low or moderate income housing. It shall  
33 be sufficient if such certification is signed by one member of the household; and

34 (iv) The unit for which credit is sought is affordable to low and moderate income  
35 households under the standards established by the council at the time of filing of the  
36 petition for substantive certification.

1 A certification submitted pursuant to this paragraph shall be reviewable only by the  
2 council and its staff and shall not be subject to disclosure under Article 4 of Chapter 18  
3 of this title; and

4 (B) County and municipal adjustment of the present and prospective fair shares based  
5 upon available vacant and developable land, infrastructure considerations, or  
6 environmental or historic preservation factors. Adjustments shall be made whenever:

7 (i) The preservation of historical or important architecture and sites and their environs  
8 or environmentally sensitive lands may be jeopardized;

9 (ii) The established pattern of development in the community would be drastically  
10 altered;

11 (iii) Adequate land for recreation, conservation, or agricultural and farmland  
12 preservation purposes would not be provided;

13 (iv) Adequate open space would not be provided;

14 (v) Vacant and developable land is not available in the county or municipality; and

15 (vi) Adequate public facilities and infrastructure capacities are not available or would  
16 result in costs prohibitive to the public if provided;

17 (4) Provide population and household projections for the state and housing regions; and

18 (5) In its discretion, place a limit on a percentage of existing housing stock in a county  
19 or municipality and provide any other criteria including employment opportunities which  
20 the council deems appropriate upon the aggregate number of units which may be  
21 allocated to a county or municipality as its fair share of the region's present and  
22 prospective need for low and moderate income housing. No county or municipality shall  
23 be required to address a fair share beyond 1,000 units within six years from the grant of  
24 substantive certification unless it is demonstrated, following objection by an interested  
25 party and an evidentiary hearing, based upon the facts and circumstances of the affected  
26 county or municipality that it is likely that the county or municipality through its zoning  
27 powers could create a realistic opportunity for more than 1,000 low and moderate income  
28 units within that six-year period. For the purposes of this subsection, the facts and  
29 circumstances which shall determine whether a county or municipality's fair share shall  
30 exceed 1,000 units shall be a finding that the county or municipality has issued more than  
31 5,000 certificates of occupancy for residential units in the six-year period preceding the  
32 petition for substantive certification in connection with which the objection was filed.

33 (b) For the purpose of crediting low and moderate income housing units in order to arrive  
34 at a determination of present and prospective fair share, housing units comprised in a  
35 community residence for the developmentally disabled shall be fully credited pursuant to  
36 rules and regulations promulgated by the council to the extent that the units are affordable  
37 to persons of low and moderate income and are available to the general public.

(c) In carrying out the duties prescribed in this Code section, including, but not limited to, present and prospective need estimations, the council shall give appropriate weight to pertinent research studies, government reports, decisions of other agencies of government, and public comment. The council shall develop procedures for periodically adjusting regional need based upon the low and moderate income housing that is provided in the region through any federal, state, county, municipal, or private housing program.

50-8-245.

(a) The commissioner shall cause to be established and kept a register of housing projects. The register shall list all projects for which a proposal or application has been submitted for assistance under any program of loans, grants, or other financial aid administered by the state or for which the offices of the Department of Community Affairs have been solicited in furthering an application for such assistance of like nature administered by the state or the United States.

(b) The register shall identify each such project by name and location and shall identify the proposed sponsor or developer thereof. If the proposed sponsor or developer is a corporation, association, or partnership, the register shall identify by name and address each stockholder, member, or partner whose participation therein represents an equity interest exceeding five percent. No application or proposal relating to a project for which the information required by this subsection is not made available to the commissioner shall be received or entertained by any agency of the state nor shall any action upon such application or proposal be taken until the required information is made available to the commissioner.

(c) The commissioner shall file with the Governor and the General Assembly a copy of the register upon its initial compilation which shall not be later than January 1, 2006, and shall thereafter supplement the report at the end of each calendar quarter with such additional projects as are added to the register since the last supplement was submitted. The original report and each supplement shall include for each project the priority designation assigned to it pursuant to Code Section 50-8-246. The original report and each supplement shall be filed with the Governor, the Secretary of the Senate, and the Clerk of the House of Representatives and shall be a public document.

50-8-246.

(a) The commissioner shall cause to be developed a system for assigning and designating priority ratings to each project included in the register of housing projects. Priority ratings shall be based upon the following factors, giving to each factor such weight as the commissioner shall judge to be appropriate:

(1) Feasibility. Each project shall be evaluated for its physical and financial feasibility, giving consideration to the capabilities of the proposed sponsor or developer, market conditions, and regulatory requirements in the locality for which it is proposed, and the availability of financing in sufficient amount and at reasonable cost;

(2) Desirability. Each project shall be evaluated in accordance with the standards and criteria of the council with relation to its probable effect in meeting the affordable housing needs of the housing region in which it is to be located. Consideration shall be given to:

(A) The number of affordable housing units that the project would provide;

(B) The proportion of affordable units to the total number of units envisaged in the project plan;

(C) The distribution of those affordable units as between those affordable to persons and families of low income and those of moderate income, considered in relation to the needs of the housing region;

(D) The appropriateness of the proposed tenure of the affordable units;

(E) Whether it be rental or owner-occupied, in relation to the needs of the housing region; and

(F) The appropriateness of the proposed distribution of units as to family size in relation to the needs of the housing region; and

(3) Efficiency. Each project shall be evaluated on the basis of cost to the state in terms of financial assistance granted or revenue foregone in order to further the project for each affordable dwelling unit judged by the commissioner to be feasible and desirable according to the terms of the proposal or application made for such assistance.

(b) In developing the system of assigning and designating priorities and in evaluating individual projects for such assignment and designation in the register, the commissioner shall consult with the other state agencies involved in funding or assisting in the development of such project. The other state agencies shall promptly and fully supply the commissioner with all relevant information necessary for the commissioner to fulfill timely and completely the requirements of this article.

50-8-247.

(a) Any officer or employee of the Department of Community Affairs and any officer or employee of the council who receives from any person any solicitation, application, proposal, or communication of any kind, whether oral or in writing, aimed at furthering the assistance of any project shall promptly report the same to the commissioner. The report shall identify the person or persons making such communication. If any such person is not identified in the register in accordance with subsection (b) of Code Section 50-8-245, the



1 report shall state the person's relationship to the sponsor or developer of the project and the  
2 capacity in which the person represents himself or herself to be acting on behalf of the  
3 sponsor or developer or, if the person fails or refuses to supply that information, the report  
4 shall so state.

5 (b) The commissioner shall develop a procedure or procedures by which reports required  
6 under this Code section shall be made to the commissioner directly or through such  
7 administrative channels as the commissioner shall devise and direct. The commissioner  
8 is authorized to promulgate such rules and regulations to carry out the provisions of this  
9 Code section as he or she shall deem necessary or expedient. Such rules and regulations  
10 shall apply to the officers and employees of the Department of Community Affairs and to  
11 the officers and employees of the council and all officers and employees of the department  
12 and council shall give full compliance with and obedience to such rules and regulations.

13 (c) Reports made to the commissioner shall be promptly forwarded by him or her, not later  
14 than ten days after their receipt by him or her, to the Governor and to the presiding officers  
15 of the General Assembly, who shall cause all members of the General Assembly to be  
16 notified of the receipt of such reports and shall make adequate provision for the inspection  
17 of the commissioner's reports by the members and committees of the General Assembly  
18 and for the dissemination of such reports to the public. The reports forwarded by the  
19 commissioner shall in each instance indicate the priority rating that has been assigned in  
20 the register to the project to which the report relates.

21 50-8-248.

22 The commissioner and the council shall each be authorized to promulgate such rules and  
23 regulations as necessary or expedient to carry out the provisions of this article.

24 50-8-249.

25 (a) On or prior to January 1, 2006, each county or municipality which so elects shall, by  
26 a duly adopted resolution of participation, notify the council of its intent to submit to the  
27 council its fair share housing plan. Within six months after the council's adoption of its  
28 criteria and guidelines, the county or municipality shall prepare and file with the council  
29 a housing element, based upon the council's criteria and guidelines, and any fair share  
30 housing ordinance which implements the housing element.

31 (b) A county or municipality which does not notify the council of its participation by  
32 January 1, 2006, may do so at any time thereafter. However, in any exclusionary zoning  
33 litigation instituted against such a county or municipality, there shall be no exhaustion of  
34 administrative remedy requirements pursuant to this article unless the county or

1 municipality files its fair share plan and housing element with the council prior to the  
2 institution of the litigation.

3 50-8-250.

4 A county or municipality's housing element shall be designed to achieve the goal of access  
5 to affordable housing to meet present and prospective housing needs with particular  
6 attention to low and moderate income housing and shall contain at least the following  
7 components:

8 (1) An inventory of the county or municipality's housing stock by age, condition,  
9 purchase or rental value, occupancy characteristics, and type, including the number of  
10 units affordable to low and moderate income households and substandard housing  
11 capable of being rehabilitated, and in conducting this inventory the county or  
12 municipality shall have access to all necessary property tax assessment records and  
13 information;

14 (2) A projection of the county or municipality's housing stock, including the probable  
15 future construction of low and moderate income housing, of the next six years, taking into  
16 account, but not limited to, construction permits issued, approvals of applications for  
17 development, and probable residential development of lands;

18 (3) An analysis of the county or municipality's demographic characteristics, including,  
19 but not limited to, household size, income level, and age;

20 (4) An analysis of the existing and probable future employment characteristics of the  
21 county or municipality;

22 (5) A determination of the county or municipality's present and prospective fair share  
23 for low and moderate income housing and its capacity to accommodate its present and  
24 prospective housing needs, including its fair share for low and moderate income housing;  
25 and

26 (6) A consideration of the lands that are most appropriate for construction of low and  
27 moderate income housing and of the existing structures most appropriate for conversion  
28 to or rehabilitation for low and moderate income housing, including a consideration of  
29 lands of developers who have expressed a commitment to provide low and moderate  
30 income housing.

31 50-8-251.

32 (a) When computing a county or city adjustment regarding available land resources as part  
33 of the determination of a county or municipality's fair share of affordable housing, the  
34 council shall exclude from designating as vacant land:

(1) Any land that is owned by a local government entity that has adopted, prior to the institution of a lawsuit seeking a builder's remedy or prior to the filing of a petition for substantive certification of a housing element and fair share plan, a resolution authorizing the execution of an agreement or designating that the land shall be utilized for a public purpose other than housing;

(2) Any land listed on a master plan of the county or municipality as being dedicated by easement or otherwise for purposes of conservation, park lands, or open space which is owned, leased, licensed, or in any manner operated by a county, municipality, other local government entity, or tax-exempt, nonprofit organization for so long as the county, municipality, other local government entity, or tax-exempt, nonprofit organization maintains such ownership, lease, license, or operational control of such land; and

(3) Any vacant contiguous parcels of land in private ownership of a size which would accommodate fewer than five housing units if current standards of the council were applied pertaining to housing density. No county or municipality shall be required to utilize for affordable housing purposes land that is excluded from being designated as vacant land.

(b) Notwithstanding any other provision of law to the contrary, nothing shall preclude a county or municipality which has reserved less than 3 percent of its land area for conservation, park lands, or open space from reserving up to 3 percent of its land area for those purposes.

50-8-252.

(a) In adopting its housing element, the county or municipality may provide for its fair share of low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share. The housing element shall contain an analysis demonstrating it will provide such a realistic opportunity and the county or municipality shall establish that its land use and other relevant ordinances have been revised to incorporate the provisions for low and moderate income housing. In preparing the housing element, the county or municipality shall consider the following techniques for providing low and moderate income housing within the county or municipality, as well as other techniques as may be published by the council or proposed by the county or municipality:

(1) Rezoning for densities necessary to assure economic viability of any inclusionary developments, either through mandatory set-asides or density bonuses, as may be necessary to meet all or part of the county or municipality's fair share;

(2) Determination of the total residential zoning necessary to assure that the county or municipality's fair share is achieved;

(3) Determination of measures that the county or municipality will take to assure that low and moderate income units remain affordable to low and moderate income households for an appropriate period of not less than six years;

(4) A plan for infrastructure expansion and rehabilitation if necessary to assure the achievement of the county or municipality's fair share of low and moderate income housing;

(5) Donation or use of county or municipally owned land or land condemned by the county or municipality for purposes of providing low and moderate income housing;

(6) Tax abatements for purposes of providing low and moderate income housing;

(7) Utilization of funds obtained from any state or federal subsidy toward the construction of low and moderate income housing; and

(8) Utilization of county or municipally generated funds toward the construction of low and moderate income housing.

(b) The county or municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing which is not inconsistent with this article.

(c) The county or municipality may propose that a portion of its fair share be met through a regional contribution agreement. The housing element shall demonstrate, however, the manner in which that portion will be provided within the county or municipality if the regional contribution agreement is not entered into. The county or municipality shall provide a statement of reasons for the proposal.

(d) Nothing in this article shall require a county or municipality to raise or expend county or municipal revenues in order to provide low and moderate income housing.

(e) When a county or municipality's housing element includes the provision of rental housing units in a community residence for the developmentally disabled which will be affordable to persons of low and moderate income and for which adequate measures to retain such affordability are included in the housing element, those housing units shall be fully credited as permitted under the rules and regulations of the council towards the fulfillment of the county or municipality's fair share of low and moderate income housing.

50-8-253.

Nothing in this article shall be construed to require that a county or municipality fulfill all or any portion of its fair share housing obligation through permitting the development or redevelopment of property within the county or municipality on which is located a residential structure which has not been declared unfit or which was within the previous three years negligently or willfully rendered unfit for human occupancy or use and which

1 is situated on a lot of less than two acres of land or on a lot formed by merging two or more  
2 such lots if the development would require the demolition of that structure.

3 50-8-254.

4 (a) A county or municipality may propose the transfer of up to 50 percent of its fair share  
5 to another county or municipality within its housing region by means of a regional  
6 contribution agreement between the two entities. A county or municipality may also  
7 propose a transfer by contracting with another county or municipality outside of its housing  
8 region if the council determines that the county or municipality has exhausted all  
9 possibilities within its housing region. A county or municipality proposing to transfer a  
10 portion of its fair share to another county or municipality shall provide the council with the  
11 housing element and statement required pursuant to Code Section 50-8-251 and shall  
12 request the council to determine a match with a county or municipality filing a statement  
13 of intent pursuant to subsection (e) of this Code section. Except as provided in subsection  
14 (b) of this Code section, the agreement may be entered into upon obtaining substantive  
15 certification under this article or anytime thereafter. The regional contribution agreement  
16 entered into shall specify how the housing shall be provided by the receiving county or  
17 municipality and the amount of contributions to be made by the sending county or  
18 municipality.

19 (b) A county or municipality that is a defendant in an exclusionary zoning lawsuit and that  
20 has not obtained substantive certification pursuant to this article may request the court to  
21 be permitted to fulfill a portion of its fair share by entering into a regional contribution  
22 agreement. If the court believes the request to be reasonable, the court shall request the  
23 council to review the proposed agreement and to determine a match with a receiving entity  
24 or entities pursuant to this Code section. The agreement shall be entered into prior to the  
25 entry of a final judgment in the litigation.

26 (c) Regional contribution agreements shall be subject to approval by the council. The  
27 council shall determine whether the agreement provides a realistic opportunity for the  
28 provision of low and moderate income housing within convenient access to employment  
29 opportunities. The council shall also determine if the agreement is in accordance with  
30 sound, comprehensive regional planning. After it has been determined that the agreement  
31 provides a realistic opportunity for low and moderate income housing within convenient  
32 access to employment opportunities and that the agreement is consistent with sound,  
33 comprehensive regional planning, the council shall approve the agreement by resolution.

34 (d) In approving a regional contribution agreement, the council shall set forth in its  
35 resolution a schedule of the contributions to be appropriated annually by the sending  
36 county or municipality.

(e) The council shall maintain current lists of counties and municipalities that have stated an intent to enter into regional contribution agreements as receiving counties or municipalities and shall establish procedures for filing statements of intent with the council. No receiving county or municipality shall be required to accept a greater number of low and moderate income housing units through an agreement than it has expressed a willingness to accept in its statement, but the number stated shall not be less than a reasonable minimum number of units, not to exceed 100, as established by the council. The council shall require a project plan from the receiving county or municipality prior to the entering into of the agreement and shall review the project plan for feasibility prior to the council's approval of the agreement. The council may approve as part of the project plan a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the project shall be less than 30 years if it is determined that such modification is necessary to assure the economic viability of the project.

(f) The council shall establish guidelines for the duration and amount of contribution in regional contribution agreements. In doing so, the council shall give substantial consideration to the average of the median amount required to rehabilitate a low and moderate income unit up to code enforcement standards, the average internal subsidization required for a developer to provide a low income housing unit in an inclusionary development, and the average internal subsidization required for a developer to provide a moderate income housing unit in an inclusionary development. Contributions may be prorated in county or municipal appropriations occurring over a period not to exceed six years and may include an amount agreed upon to compensate or partially compensate the receiving county or municipality for infrastructure or other costs incurred by the receiving county or municipality by the development. Appropriations shall be made and paid directly to the receiving county or municipality.

(g) The council shall require receiving counties and municipalities to file annual reports with the council setting forth the progress in implementing a project funded under a regional contribution agreement. The council shall have the authority to and shall take such action as necessary to enforce a regional contribution agreement with respect to the timely implementation of the project by the receiving county or municipality.

50-8-255.

(a) A county or municipality that has filed a housing element may, at any time during a two-year period following the filing of the housing element, petition the council for a substantive certification of its element and ordinances or institute an action for declaratory judgment in the superior court granting it a six-year repose. The county or municipality

1 shall publish notice of its petition in a newspaper of general circulation within the county  
2 or municipality and shall make available to the public information on the housing element  
3 and ordinances in accordance with such procedures as the council shall establish. The  
4 council shall also establish a procedure for providing public notice of each petition that it  
5 receives.

6 (b) The council shall not consider for substantive certification any petition based upon a  
7 housing element which involves the demolition of a housing structure that has not been  
8 declared unfit or that has been within the previous three years negligently or willfully  
9 rendered unfit for human occupancy or use and which is situated on a lot of less than two  
10 acres of land or on a lot formed by merging two or more such lots unless an application for  
11 development has been previously approved by the county or municipality.

12 50-8-256.

13 Unless an objection to the substantive certification is filed with the council by any person  
14 within 45 days of the publication of the notice of a county or municipality's petition, the  
15 council shall review the petition and shall issue a substantive certification if it finds that:

16 (1) The county or municipality's fair share plan is consistent with the rules and  
17 regulations and criteria adopted by the council and not inconsistent with achievement of  
18 the low and moderate income housing needs of the region as adjusted pursuant to the  
19 council's criteria and guidelines adopted pursuant to Code Section 50-8-244; and

20 (2) The combination of the elimination of unnecessary housing cost generating features  
21 from the county or municipal land use ordinances and regulations and the affirmative  
22 measures in the housing element and implementation plan make the achievement of the  
23 county or municipality's fair share of low and moderate income housing realistically  
24 possible after allowing for implementation of any regional contribution agreement  
25 approved by the council.

26 In conducting its review, the council may meet with the county or municipality and may  
27 deny the petition or condition its certification upon changes in the element or ordinances.  
28 Any denial or conditions for approval shall be in writing and shall set forth the reasons for  
29 the denial or conditions. If, within 60 days of the council's denial or conditional approval,  
30 the county or municipality refiles its petition with changes satisfactory to the council, the  
31 council shall issue a substantive certification. Once substantive certification is granted, the  
32 county or municipality shall have 45 days in which to adopt its fair share housing ordinance  
33 approved by the council.

1 50-8-257.

2 (a) The council shall engage in a mediation and review process when an objection to a  
3 county or municipality's petition for substantive certification is filed with the council  
4 during the period specified in Code Section 50-8-255 or when a request for mediation and  
5 review is filed pursuant to Code Section 50-8-258.

6 (b) In cases in which an objection is filed to substantive certification, the council shall  
7 meet with the county or municipality and the objectors and attempt to mediate a resolution  
8 of the dispute. If the mediation is successful, the council shall issue a substantive  
9 certification if it finds that the criteria set forth in Code Section 50-8-255 have been met.

10 (c) If the mediation efforts are unsuccessful, the matter shall be referred to the Office of  
11 State Administrative Hearings as a contested case under Chapter 13 of this title, the  
12 'Georgia Administrative Procedure Act.' The Office of State Administrative Hearings shall  
13 expedite its hearing process as much as practicable by promptly assigning an administrative  
14 law judge to the matter; promptly scheduling an evidentiary hearing; expeditiously  
15 conducting and concluding the evidentiary hearing; limiting the time allotted for briefs,  
16 proposed findings of fact and conclusions of law, proposed orders, and other supplementary  
17 material; and the prompt preparation of an initial decision. A written transcript of all oral  
18 testimony and copy of all exhibits introduced into evidence shall be submitted to the  
19 council by the Office of State Administrative Hearings simultaneously with the initial  
20 decision. The evidentiary hearings shall be concluded and the initial decision issued no  
21 later than 90 days after the transmittal of the matter as a contested case to the Office of  
22 State Administrative Hearings by the council, unless the time is extended by the chief state  
23 administrative law judge for good cause shown.

24 50-8-258.

25 (a) For those exclusionary zoning cases instituted more than 60 days prior to the effective  
26 date of this article, any party to the litigation may file a motion with the court to seek a  
27 transfer of the case to the council. In determining whether to transfer, the court shall  
28 consider whether the transfer would result in a manifest injustice to any party to the  
29 litigation. If the county or municipality fails to file a housing element and fair share plan  
30 with the council within five months from the date of transfer or promulgation of criteria  
31 and guidelines by the council pursuant to Code Section 50-8-244, whichever occurs later,  
32 jurisdiction shall revert to the court.

33 (b) Any person who institutes litigation less than 60 days before the effective date of this  
34 article or after the effective date of this article challenging a county or municipality's  
35 zoning ordinance with respect to the opportunity to provide for low or moderate income  
36 housing shall file a notice to request review and mediation with the council pursuant to



1 Code Sections 50-8-256 and 50-8-257. In the event that the county or municipality adopts  
2 a resolution of participation within the period established in Code Section 50-8-248, the  
3 person shall exhaust the review and mediation process of the council before being entitled  
4 to a trial on his or her complaint.

5 50-8-259.

6 (a) In any exclusionary zoning case filed against a county or municipality that has a  
7 substantive certification and in which there is a requirement to exhaust the review and  
8 mediation process pursuant to Code Section 50-8-257, there shall be a presumption of  
9 validity attached to the housing element and ordinances implementing the housing element.  
10 To rebut the presumption of validity, the complainant shall have the burden of proof to  
11 demonstrate by clear and convincing evidence that the housing element and ordinances  
12 implementing the housing element do not provide a realistic opportunity for the provision  
13 of the county or municipality's fair share of low and moderate income housing after  
14 allowing for the implementation of any regional contribution agreement approved by the  
15 council.

16 (b) There shall be a presumption of validity attached to any regional contribution  
17 agreement approved by the council. To rebut the presumption of validity, the complainant  
18 shall have the burden of proof to demonstrate by clear and convincing evidence that the  
19 agreement does not provide for a realistic opportunity for the provision of low and  
20 moderate income housing within the region.

21 (c) The council shall be made a party to any exclusionary zoning suit against a county or  
22 municipality that receives substantive certification and shall be empowered to present to  
23 the court its reasons for granting substantive certification.

24 50-8-260.

25 If a county or municipality that has adopted a resolution of participation pursuant to Code  
26 Section 50-8-248 fails to meet the deadline for submitting its housing element to the  
27 council prior to the institution of exclusionary zoning litigation, the obligation to exhaust  
28 administrative remedies contained in Code Section 50-8-257 automatically expires. The  
29 obligation also expires if the council rejects the county or municipality's request for  
30 substantive certification or conditions its certification upon changes that are not made  
31 within the period established in this article or within an extension of that period agreed to  
32 by the council and all litigants.

1 50-8-261.

2 If the council has not completed its review and mediation process for a county or  
3 municipality within six months of receipt of a request by a party who has instituted  
4 litigation, the party may file a motion with a court of competent jurisdiction to be relieved  
5 of the duty to exhaust administrative remedies. In the case of review and mediation  
6 requests filed within nine months after this article becomes effective, the six-month  
7 completion date shall not begin to run until nine months after this article becomes effective.

8 50-8-262.

9 (a) The Department of Community Affairs shall establish a Neighborhood Preservation  
10 Program fund from which, after funding by line item appropriation, the commissioner shall  
11 award grants and loans for housing projects and programs in counties and municipalities  
12 whose housing elements have received substantive certification from the council, in  
13 counties and municipalities subject to a builder's remedy, or in receiving counties and  
14 municipalities in cases where the council has approved a regional contribution agreement  
15 and a project plan developed by the receiving municipality. Programs and projects in any  
16 county or municipality shall be funded only after receipt by the commissioner of a written  
17 statement in support of the program or project from the county or municipal governing  
18 authority.

19 (b) The commissioner shall establish rules and regulations governing the qualifications of  
20 applicants, the application procedures, and the criteria for awarding grants and loans and  
21 the standards for establishing the amount, terms, and conditions of each grant or loan.

22 (c) During the first 12 months after the effective date of this article and for any additional  
23 period which the council may approve, the commissioner may assist affordable housing  
24 programs which are not located in counties or municipalities whose housing elements have  
25 been granted substantive certification or which are not in furtherance of a regional  
26 contribution agreement, provided that the affordable housing program will meet all or part  
27 of a county or municipal low and moderate income housing obligation.

28 (d) The Neighborhood Preservation Program fund shall be targeted to regions based on the  
29 region's percentage of the state's low and moderate income housing need as determined  
30 by the council. Amounts in the fund shall be applied for the following purposes in  
31 designated neighborhoods:

32 (1) Rehabilitation of substandard housing units occupied or to be occupied by low and  
33 moderate income households;

34 (2) Creation of accessory apartments to be occupied by low and moderate income  
35 households;

1 (3) Conversion of nonresidential space to residential purposes, provided that a substantial  
2 percentage of the resulting housing units are to be occupied by low and moderate income  
3 households;

4 (4) Acquisition of real property, demolition and removal of buildings, or construction of  
5 new housing that will be occupied by low and moderate income households, or any  
6 combination thereof;

7 (5) Grants of assistance to eligible counties and municipalities for costs of necessary  
8 studies, surveys, plans, and permits; architectural and other technical services; costs of  
9 land acquisition and any buildings thereon; and costs of site preparation, demolition, and  
10 infrastructure development for projects undertaken pursuant to an approved regional  
11 contribution agreement;

12 (6) Assistance to a local housing authority or nonprofit or limited dividend housing  
13 corporation or association for rehabilitation or restoration of housing units which it  
14 administers which are unusable or in serious state of disrepair, can be restored in an  
15 economically feasible and sound manner, and can be retained in a safe, decent, and  
16 sanitary manner upon completion of rehabilitation or restoration; and

17 (7) Other housing programs for low and moderate income housing, including, without  
18 limitation, infrastructure projects directly facilitating the construction of low and  
19 moderate income housing not to exceed a reasonable percentage of the construction costs  
20 of the low and moderate income housing to be provided and alteration of dwelling units  
21 occupied by or to be occupied by households of low and moderate income and the  
22 common areas of the premises in which they are located in order to make them  
23 accessible to persons with disabilities.

24 (e) Any grant or loan agreement entered into pursuant to this Code section shall  
25 incorporate contractual guarantees and procedures by which the Department of Community  
26 Affairs will ensure that any unit of housing provided for low and moderate income  
27 households shall continue to be occupied by low and moderate income households for at  
28 least 20 years following the award of the loan or grant, except that the commissioner may  
29 approve a guarantee for a period of less than 20 years where necessary to ensure project  
30 feasibility.

31 50-8-263.

32 (a) In addition to the Neighborhood Preservation Program established pursuant to Code  
33 Section 50-8-262, the Department of Community Affairs shall also establish an affordable  
34 housing assistance program to assist counties and municipalities in meeting the obligation  
35 of developing communities to provide low and moderate income housing.

(b) The department shall, to the extent of available funds for such purpose, award assistance to affordable housing programs located in counties and municipalities whose housing elements have received substantive certification from the council, have been subject to a builder's remedy, or are in furtherance of a regional contribution agreement approved by the council. During the first 12 months after the effective date of this article and for any additional period which the council may approve, the commissioner may assist affordable housing programs which are not located in counties or municipalities whose housing elements have been granted substantive certification or which are not in furtherance of a regional contribution agreement, provided that the affordable housing program will meet all or part of a county or municipal low and moderate income housing obligation.

(c) Assistance provided pursuant to this Code section may take the form of grants or awards to counties or municipalities; any person, partnership, corporation, or association, whether organized as for profit or not for profit, to which a state agency has made or proposes to make a loan, either directly or through an institutional lender, for a housing project; or prospective home purchasers or as contributions to the issuance of mortgage revenue bonds or multi-family housing development bonds which have the effect of achieving the goal of producing affordable housing.

(d) Affordable housing programs which may be financed or assisted under this Code section may include, but are not limited to:

(1) Assistance for home purchase and improvement, including interest rate assistance, down payment and closing cost assistance, and direct grants for principal reduction;

(2) Rental programs, including loans or grants for developments containing low and moderate income housing, moderate rehabilitation of existing rental housing, and congregate care and retirement facilities;

(3) Financial assistance for the conversion of nonresidential space to residences for low and moderate income households;

(4) Other housing programs for low and moderate income housing, including infrastructure projects directly facilitating the construction of low and moderate income housing; and

(5) Grants or loans to counties or municipalities; persons, partnerships, corporations, or associations, whether organized as for profit or not for profit, to which a state agency has made or proposes to make a loan, either directly or through an institutional lender, for a housing project; and community organizations to encourage development of innovative approaches to affordable housing, including:

(A) Such advisory, consultative, training, and educational services as will assist in the planning, construction, rehabilitation, and operation of affordable housing; and

1 (B) Encouraging research and demonstration projects to develop new and better  
2 techniques and methods for increasing the supply, types, and financing of housing and  
3 housing projects in the state.

4 (e) The Department of Community Affairs shall establish procedures and guidelines  
5 governing the qualification of applicants, the application procedures, and the criteria for  
6 awarding grants and loans for affordable housing projects and the standards for establishing  
7 the amount, terms, and conditions for each such grant or loan.

8 (f) The Department of Community Affairs shall establish requirements and controls to  
9 ensure the maintenance of housing assisted under this Code section as affordable to low  
10 and moderate income households for a period of not less than 20 years, provided that the  
11 department may establish a shorter period upon a determination that the economic  
12 feasibility of the program is jeopardized by the requirement and the public purpose served  
13 by the program outweighs the shorter period. The controls may include, but are not limited  
14 to, requirements for recapture of assistance provided pursuant to this Code section or  
15 restrictions on return on equity in the event of failure to meet the requirements of the  
16 program.

17 50-8-264.

18 Any county or municipality which has reached a settlement of any exclusionary zoning  
19 litigation prior to the effective date of this article shall not be subject to any exclusionary  
20 zoning suit for a six-year period following the effective date of this article. Any such  
21 county or municipality shall be deemed to have a substantively certified housing element  
22 and ordinances and shall not be required during that period to take any further actions with  
23 respect to provisions for low and moderate income housing in its land use ordinances or  
24 regulations.

25 50-8-265.

26 The Department of Community Affairs shall establish procedures for entering into and  
27 shall enter into contractual agreements with willing counties and municipalities or  
28 developers of inclusionary developments whereby the department will administer resale  
29 controls and rent controls in counties and municipalities where no appropriate  
30 administrative agency exists. The contractual agreements shall be for the duration of the  
31 controls and shall involve eligibility determinations, determination of initial occupants, the  
32 marketing of units, maintenance of eligibility lists for subsequent purchasers or renters, and  
33 determination of maximum resale prices or rents. The department may charge the county  
34 or municipality or inclusionary developer a reasonable per unit fee for entering into such  
35 an agreement or may charge a reasonable fee to a low or moderate income household at the

1 time the home is sold subject to the resale control or both. Neither the department nor any  
2 other entity entering into an agreement to provide services to a county or municipality  
3 under this Code section shall require, as a condition of such agreement, that these services  
4 be provided for all eligible housing units in the county or municipality. A county or  
5 municipality may, at its discretion, enter into an agreement for the provision of services for  
6 any reasonable portion of its eligible housing units.

7 50-8-266.

8 (a) Notwithstanding any other law to the contrary, a county or municipality may purchase,  
9 lease, or acquire by gift or through the exercise of eminent domain real property and any  
10 estate or interest therein which the county or municipal governing authority determines  
11 necessary or useful for the construction or rehabilitation of low and moderate income  
12 housing or conversion to low and moderate income housing.

13 (b) The county or municipality may provide for the acquisition, construction, and  
14 maintenance of buildings, structures, or other improvements necessary or useful for the  
15 provision of low and moderate income housing and may provide for the reconstruction,  
16 conversion, or rehabilitation of those improvements in such manner as may be necessary  
17 or useful for those purposes.

18 (c) Notwithstanding any other law to the contrary, a county or municipality governing  
19 authority may, by resolution, authorize the private sale and conveyance or lease of a  
20 housing unit or units acquired or constructed pursuant to this Code section where the sale,  
21 conveyance, or lease is to a low or moderate income household or nonprofit entity and  
22 contains a contractual guarantee that the housing unit will remain available to low and  
23 moderate income households for a period of at least 30 years.

24 50-8-267.

25 (a) Within 12 months after the effective date of this article, the Department of Community  
26 Affairs and the council shall report separately to the Governor and the General Assembly  
27 on the effect of this article in promoting the provision of low and moderate income housing  
28 in the several housing regions of this state. The reports may include recommendations for  
29 any revisions or changes in this article which the department or council believes necessary  
30 to more nearly effectuate the purposes of this article.

31 (b) Within 36 months after the effective date of this article, the council shall report to the  
32 Governor and the General Assembly concerning the actions necessary to be taken at the  
33 state, regional, county, and municipal levels to provide for the implementation and  
34 administration of this article on a regional basis including any revisions or changes in this  
35 article to accomplish that end. The council may include in the report any recommendations

1 or considerations it may wish to provide regarding the advisability of implementing and  
2 administering this article on a regional basis.

3 50-8-268.

4 (a) No builder's remedy shall be granted to a plaintiff in any exclusionary zoning litigation  
5 which has been filed on or after January 1, 2005, unless a final judgment providing a  
6 builder's remedy has already been rendered to that plaintiff and all rights to appeal of such  
7 judgment have expired. This provision shall terminate upon the expiration of the period  
8 set forth in subsection (a) of Code Section 50-8-248 for the filing with the council of a  
9 county or municipality's housing element."

10 **SECTION 2.**

11 This Act shall become effective on July 1, 2005.

12 **SECTION 3.**

13 All laws and parts of laws in conflict with this Act are repealed.